IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 556 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

DILUBHAI HIMATSINH

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Appearance:

MR MA BUKHARI, APP, for appellant.

MR G RAMAKRISHNAN for Respondent No. 1

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/06/2001

ORAL JUDGEMENT

1. The present appeal arises out of a judgment and order rendered by learned Judicial Magistrate, First Class, at Dholka, in Criminal Case No.475 of 1981 on February 11, 1982. By virtue of that judgment and order, learned Magistrate acquitted the present respondent of charges levelled against him under Sections 504 and 506 of Indian Penal Code and Sections 3 and 7 of Protection of Civil Rights Act, 1955. Aggrieved by the said judgment and order, the State has preferred this appeal.

2. The facts of the case, in a narrow compass, are that, Mohanbhai Khanabhai of village Santhal of Ahmedabad district lodged a complaint with Police Sub-Inspector, Dholka on 2.11.1980, alleging that on the previous day, i.e. 1.11.1980, at about 9.00 P.M., there was a gathering of the village in connection with some lucky draw, where he had also gone near the village temple. He was in company of Govindbhai Fulabhai, Jethabhai Kalabhai and others. They were sitting on an Otta at a distance of about 30 feet from the temple. At that time, the present respondent-Dilibhai Himatsinh Jhala came there and abused them. He stated "Is this Otta constructed by your father? All other Dhedas are sitting away. Can you not sit there?". The Investigating Officer investigated the case and filed a charge sheet. The Trial Court, after recording evidence, found that the prosecution case suffered from infirmities and it cannot be said that the prosecution had proved its case against the accused and, therefore, the accused-respondent came to be acquitted by the impugned judgment and order.

3. Heard learned Additional Public Prosecutor Mr. Bukhari. Mr. G. Ramakrishnan appointed for the respondent has not appeared before this Court. Mr. H.N. Joshi, learned advocate who is present in the Court has volunteered to assist the Court as amicus curiae. He has gone through the records and has been heard by this Court.

4. Learned Additional Public Prosecutor Mr. Bukhari has taken this Court through the evidence on record as well as the judgment and order impugned herein. The record and proceedings has also been scanned by this Court.

5. Mr. Bukhari contended that the conclusion arrived at by the Court and the reasons adopted therefor are erroneous. He submitted that the complaint is lodged on the very next day of the incident. The incident occurred late in the evening at about 9.00 P.M. Still the learned Judge has observed that the complaint is highly delayed. The learned Judge has given undue weightage to minor contradictions and has acquitted the respondent, which is not correct and, therefore, this appeal may be allowed.

6. Mr. Joshi has opposed this appeal. He submitted that, if the depositions of the witnesses are seen, they reveal material contradictions. The complainant's versions emerging from his complaint and his deposition are contradictory. Likewise, the version of eye-witness

Jethabhai Kalabhai is also different, whereas the version of Govindbhai Fulabhai is also different. None of these witnesses provide any corroboration to the other witnesses. There is nothing to indicate that an offence punishable under Section 3 or Section 7 of the Protection of Civil Rights Act, 1955 is constituted. Likewise, offences under Sections 504 and 506 are also not indicated to have been committed by the respondent. The learned Trial Judge appreciated this aspect and acquitted the accused rightly and the appeal may, therefore, be dismissed.

7. Having regard to rival side contentions, it is very clear from evidence on record that the picture given by the complainant and other two witnesses, who claim to have been present at the time of the incident do not corroborate each other. Altogether different language is indicated to have been employed by the respondent at the time of the alleged incident. When the offence itself can be said to have been constituted or committed by certain utterances, those exact utterances have to be brought on record to prove that offence, whereas the version emerging from the depositions of the three witnesses are different. In fact, if depositions of Govindbhai Fulabhai is seen, he does not state anything to have been spoken by the respondent in respect of the caste of the complainant. So far as Jethabhai Kalabhai and complainant Mohanbhai are concerned, they both put different words in mouth of the respondent and, therefore, it becomes a matter of doubt as to whether, in fact, such incident occurred. Another relevant aspect is that in spite of the fact that there are number of other independent witnesses present at the time of incident, no independent witness is examined. Same is the situation so far as the offences punishable under Sections 504 and 506 of Indian Penal Code are concerned.

8. Apart from this, of the provisions of the Protection of Civil Rights Act, particularly Sections 3 and 7 are seen, Section 3 prescribes punishment for preventing any person from entering any place of public worship or from worshipping or offering any prayers or performing any religious service in any place of public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water-course, river or lake or bathing at any ghat of such tank, water-course, river or lake on the ground of untouchability. In the instant case, it is not the case of the complainant that the respodent did any one of the above stated acts on ground of untouchability and, therefore, offence punishable under Section 3 cannot be said to have been committed.

9. Likewise, if Section 7 of the Protection of Civil Rights Act is examined, it provides that for committing that crime, one has to prevent any person from exercising any right accruing to him by reason of abolition of untouchability under Article 17 of the Constitution or to molest, injure, annoy, obstruct or cause or attempt to cause obstruction to any person in exercise of such right or to boycott any person by reason of his having exercised any such right or by words either spoken or or written or by signs or by visible representations or otherwise incite or encourage any person or class of persons or the public generally to practice untouchability in any form whatsoever or to insult or attempt to insult on the ground of untouchability a member of a Scheduled Caste. Herein, there is nothing to indicate that any of these acts are committed by the respondent. There is nothing to indicate that the complainant, who claims to have been insulted, belongs to Schedule Caste. The other acts indicated in sub-section (1)(a) and 2 of Section 7 are also not indicated to be attracted and, therefore, it cannot be said that an error is committed by the Trial Court in holding that the prosecution failed to prove the case against the accused-respondent. The learned Additional Public Prosecutor Mr. Bukhari was at loss to indicate any illegality or error committed by the Trial Court.

10. It is true that incident occurred at 9.00 P.M. on 1.11.1980 and the F.I.R. was lodged on 2.11.1980. The distance between the place of incident and Dholka is about 8 kms., as per record. It is stated by the first informant that no conveyance is available ater 9.00 P.M. for going to Dholka. Under the circumstances, there appears some substance in the contention raised by Mr. Bukhari with respect to the observation by the Trial Court regarding delay. But that by itself will not provide a ground to set aside the order of acquittal impugned herein in light of above discussion.

11. In light of the above discussion, this Court is of the view that no interference is required in the impugned judgment and order. The appeal deserves to be dismissed and the same is, therefore, hereby dismissed.

12. Before parting, it would be appropriate to place on record the appreciation of the services rendered by learned advocate Mr. H.N. Joshi as amicus curiae.

[ A.L. DAVE, J. ]

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